IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.626 of 2000

Roytex rep by its
Sole Proprietor,
V.C.Ramasamy
S/o.Shri.Chidambaram,
Aged about 45 years,
61/2, Selvam Nagar,
Coimbatore 41. .. Appellant/ Complainant

Vs.

Pushpa Govindan .. Respondent/Accused No.2

Prayer: This appeal has been preferred under Section 378 of Cr.P.C against Judgment of Acquittal of the second Accused dated 17.05.2000, in STC.No.3969 of 1996, on the file of the Judicial Magistrate No.V, Coimbatore.

For Appellant : Mr.V.Sairam
For Respondent : Mr.S.Silambanan

JUDGMENT

The complainant in STC.No.3969 of 1996 on the file of the learned Judicial Magistrate No.V, Coimbatore, is the appellant herein. This appeal have been preferred only against only A2-Pushpa Govindan. A2 is partner of Sree Mookambikai Fabrics, (A1), having office at 75, Lingappa Chettiar Lane No.2, Combatore. Another partner of Sree Mookambikai Fabrics is A3-C.Karthikeyan, who has been discharged by an order in C.M.P.No.3069/1997 by the trial Court. The complainant is Roy Tex represented by its sole proprietor V.C.Ramasamy.

2. The facts in the private complaint are that the complainant supplied cotton yarn to the accused on credit basis and a sum of Rs.1,12,600/- was due to be paid by the accused to the complainant. The accused gave a chque for Rs.1,00,000/- dated 01.10.1996 and another cheque for Rs.12,600/- dated 15.10.1996. Both the cheques were drawn on the State Bank of India, Coimbatore. On presentation of the cheques both the cheques were returned on 23.10.1996 with an endorsement that there is no sufficient funds available in the

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accounts of the accused. The complainant sent lawyer's notice on 24.10.1996. A2 received the notice. A1 & A3 evaded the service of the said notices and notices were returned with an endorsement that 'party not available'. Hence, the complaint.

3. The private complaint was taken on file by the learned Judicial magistrate No.V, Coimbatore, for an offence under Section 138 of the Negotiable Instrument Act, and on appearance of the accused on summon, copies under section 207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused, the accused pleaded not guilty. On the side of the complainant, the complainant was examined as P.W.1 and an officer of the State Bank of India was examined as P.W.2. Ex.P.1 to Ex.P.18 were marked on the side of the complainant.

4 P.W.1 is the complainant. The photocopies of the invoices are Ex.P.1(series). P.W.1 would depose that for the discharge of the amount to the complainant, the accused gave one cheque for Rs.1,00,000/- dated 01.10.1996 and another cheque for Rs.12,600/- on 15.10.1996 and both cheques were drawn on the State Bank of India and when the cheques were presented for encashment through Indian Brank, R.S. Puram Branch, both cheques were returned with an endorsement that there is no sufficient funds in the accounts of the drawer. Ex.P.2 and Ex.P.3 are the cheques. Ex.P.4 is the bank's memo. Ex.P.5 is the debit advice. On 24.10.1996 lawyer's notice was sent to the accused by courier service. The copy of the notice is Ex.P.6. Ex.P.7 is the acknowledgement for the notice being served on A2. For A1 & A3 evaded the service of notice and undelivered notice are Ex.P.8 (series). The letter sent by the complainant to the accused demanding payment is Ex.P.9. Ex.P.10 is the reply sent by A2. Ex.P.12 is purchase bills. Ex.P.13 is the sale tax assessment order. Another purchase bill is Ex.P.14 and delivery note is Ex.P.15. The statement of account of the accused is Ex.P.16. The cheque for Rs.4,00,000/- given by the accused was encashed by P.W.1. Ex.P.17 is the personal account copy of the accused. Ex.P.18 is the letter issued by A1 admitting his liability. A1 has also paid Rs.25,000/- towards this debt.

5. P.W.2, an officer of the State Bank of India, would depose to the fact that A1 is having an account with the State Bank of India and Ex.P.2 and Ex.P.3 were presented in the State Bank of India, but were dishonoured on the ground that there is no sufficient funds in the drawer's account.

6. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C, the accused denied their complicity with the crime. On behalf of the accused D.W.1 was examined and Ex.D.1 to D.6 were marked.

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7. D.W.1 is the Assistant Manager in the State Bank of India, who would depose that a cheque for Rs.4,00,000/- in favour of the complainant, Roytex, drawn by A1 was encahsed and that the said cheque is Ex.D.5. Ex.D.6 is the intimation given by A1 to the bank advising the bank to stop the payment.

8. After going through the available evidence the before the trial Court, the learned trial Judge has held that the offence under Section 138 of the Negotiable Instrument Act, has been proved against A1 and accordingly convicted and sentenced A1 to pay a fine of Rs.5,000/- and A2 was found not guilty under Section 138 and A2 was acquitted under section 255(1) of Cr.P.C. Aggrieved by the findings against A2 of the trial judge, the complainant has filed this appeal.

9. Now the point for determination in this appeal is whether the findings of the learned trial judge against A2 is perverse to warrant any interference from this Court?

10.The Point:- The learned counsel for the appellant basing his argument on the fact that A1 and A2 are the partners of Sri Mookambikai Fabrics, Coimbatore, and as per section 141 of the Negotiable Instrument Act, A2 is also liable under Section 138 of the Negotiable instrument Act for bouncing of Ex.P.2 and Ex.P.3 cheques, since as one of the partners of Sri Mookambikai Fabrics, A2 is also responsible for conduct of the business of the company and shall be deemed to be guilty of the offence, but the learned trial judge without considering this, has acquitted A2. As per Section 141(2) of Negotiable Instrument Act, even any director, Manager, Secretary or other officers of the company are also liable for the offence under Section 138 of the Negotiable Instrument Act, provided that the offence is proved to be committed with the consent or connivance of them. So burden is heavily on the complainant to prove that only with the consent or connivance or knowledge of A2 the above mentioned cheques viz. Ex.P.2 and Ex.P.3 were drawn by A1 in favour of the complainant. Admittedly in Ex.P.2 and Ex.P.3, A1 alone has signed. When incriminating circumstances were put to A2 she had denied all the incriminating circumstances put to her. It is pertinent to note in this case that the notice for A2 has been issued not to No.75, Lingappa Chettiar lane No.2, Coimbatore, where Sri Mookambikai Fabrics is situated whereas the notice for A2 was sent to No.103, Raja Annamalai Puram Road, Saibaba colony, as seen from Ex.P.8. When this was put to P.W.1 in cross-examination, P.W.1 would say that since A2 is not well and taking treatment at her house at No.103, Raja Annamalai Puram Road, Saibaba colony, the notice was sent to her house address. But this explanation cannot be accepted because it is the case of the complainant that as one of the partners of

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Sri Mookambikai Fabrics, she(A2) is responsible for the bouncing of Ex.P.2 and Ex.P.4-cheques. Under such circumstances, it is the duty of the complainant to issue the legal notice only to the companies address viz. 75, Lingappa Chettiar Lane No.2, Coimbatore. So there was no opportunity given to A2 to explain in what way she (A2) is connected or unconnected with cheques Ex.P.2 and Ex.P.3, which were bounced on presentation. It is pertinent to note in this case under Ex.P.11 A1 has admitted his liability and it is also in evidence that after filing of these private complaints a sum of Rs.50,000/- has been paid to the complainant in two instalments. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial judge that A2-Pusha Govindan is not responsible for the bouncing of Ex.P.2 and Ex.P.3 cheques to warrant conviction under Section 138 of the Negotiable Instrument Act. Point is answered accordingly.

11. In the result, this appeal is dismissed confirming the judgment in STC.Nos.3969 of 1996, on the file of the Judicial Magistrate No.V, Coimbatore.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,

1.The Judicial Magistrate No.V, Coimbatore.

2.The Chief Judicial Magistrate, Coimbatore.

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1 cc to Mr.S. silambanan, Advocate, sr. 18854

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